

Notice of Allowability

Application No.

09/581,742

Examiner

Michael Brannock

Applicant(s)

DE SAUVAGE ET AL.

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to that of 8/17/04.
2. ☒ The allowed claim(s) is/are 1-3,5,6,11-19 and 22, 23, 25-27.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S STATEMENT OF REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

In the Prior Office Action, the examiner erroneously referred to the instant SEQ ID NO: 1 and 2 as corresponding to SEQ ID NO: 5 and 6 of the 60/135736 application and did not realize that the instant SEQ ID NO: 1 and 2 were disclosed in the 60/123090. SEQ ID NO: 1 and 2 correspond to the SEQ ID NO: 1 and 2 of both the 60/135736 and 60/123090 applications and SEQ ID NO: 5 and 6 of the 10/121045 application.

Priority: Applicant is notified that the Application is granted priority to the 60/135736 and 60/123090 Applications both of which disclose the instant hSu(fu) protein of SEQ ID NO: 2 and the encoding polynucleotide of SEQ ID NO: 1. For this reason, the Oath/Declaration is deemed to be proper as well.

Withdrawn Rejections:

The provisional rejection of claims 18, 19, 22, 23, 25-27 under 35 U.S.C. 101 as claiming the same invention as that of claims 78-84 of copending Application No. 10/121045 is withdrawn in view of the cancellation of those claims in the 10/121045 application.

The rejection of claims 1-3, 5, 6, 11-19, 22, 23, 25-27 under 35 U.S.C. 102(f) is withdrawn in view of the discovery that the claimed invention was disclosed in each of the prior 60/135736 and 60/123090 applications, as set forth above.

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The rejection of claims 18, 19, 22, 23, 25-27 under 35 U.S.C. 102(g) is withdrawn in view of the cancellation of claims 78-84 in the 10/121045 application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

Please note the new central fax number for official correspondence below:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brannock, Ph.D., whose telephone number is (571) 272-0869. The examiner can normally be reached on Mondays through Fridays from 10:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, Ph.D., can be reached at (571) 272-0961. Official papers filed by fax should be directed to 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Elizabeth C. Kemmerer

ELIZABETH KEMMERER
PRIMARY EXAMINER

MB



December 21, 2004